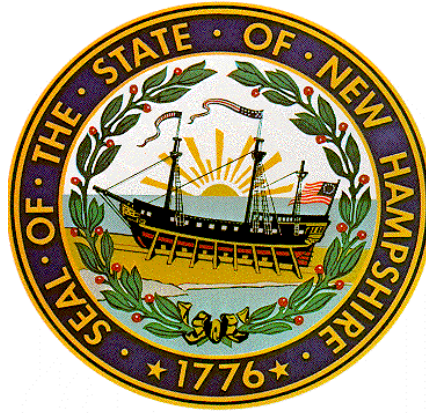


# STATE OF NEW HAMPSHIRE



## **New Hampshire Personnel Appeals Board**

### **Fiscal Year 2014 Annual Report**

**Prepared Pursuant to  
NH RSA 21-I:46 VI**

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**By Its Members and Alternate Members:**

**Commissioner Joseph Casey  
Commissioner Norman Patenaude  
Commissioner Charla Stevens  
Commissioner David Goldstein**

**And**

**Administrator of the NH Personnel Appeals Board:  
Daniel St. Hilaire**

## **Acknowledgments**

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### **Governor**

Margaret Wood Hassan

### **Members of the Executive Council**

Joseph D. Kenney, District 1

Colin Van Ostern, District 2

Christopher T. Sununu, District 3

Christopher C. Pappas, District 4

Debora B. Pignatelli, District 5

### **Commissioner of Administrative Services**

Linda M. Hodgdon

### **Director of Personnel**

Sara Willingham

### **Division of Personnel Staff**

Daniel St. Hilaire

Stephanie Haynes

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## **RSA 21-I:46 VI**

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"The board shall by September 1 of each year submit an annual report to the governor, commissioner of administrative services, and director of personnel. This report shall include a narrative summary of the work of the board during the previous fiscal year. The report shall also include a description of problems related to the personnel system and the board's recommendations for dealing with those problems."

# **NEW HAMPSHIRE PERSONNEL APPEALS BOARD**

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## **Terms of Appointment**

### **Members/Alternates Currently Serving**

**JOSEPH CASEY, Rochester**

**Chairman**

March 22, 2006 to June 2, 2016

**NORMAN PATENAUE, (Alt.) Portsmouth**

**Vice Chair**

May 23, 2014 to September 24, 2016

**CHARLA STEVENS, Bedford**

May 23, 2014 to June 2, 2017

**DAVID GOLDSTEIN, Dover**

April 9, 2014 to June 2, 2015

**Second Alternate – Vacant**

\*Since – 2004

\*NOTE – RSA 21-I:45 provides for the appointment of three regular members and two alternates. Except for a brief period from December 3, 2008 to May 29, 2009 at least one seat on the Board has been vacant since 2004.

## BOARD COMPOSITION AND DUTIES

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### **RSA 21-I:45 Composition of Board; Compensation; Removal.**

There is hereby established a personnel appeals board as follows:

I. The board shall consist of 3 members, not more than 2 of whom shall be from the same political party. There shall also be 2 alternate members of the board, not more than one of whom shall be a member of the same political party. At least 2 members of the board shall have been gainfully employed as a labor relations or personnel professional for a minimum of 5 years. One member shall have been employed within the public personnel field of employment for a minimum of 3 years. Each member and alternate shall be appointed by the governor with the consent of the council for a term of 3 years, and a person appointed to fill a vacancy shall be appointed for the unexpired term. Each member of the board and alternate shall hold office until his successor is appointed and qualified. The governor shall designate one member as chairman of the board. The board shall elect one member to serve as vice chairman. Either the chairman or vice chairman shall be a member of the New Hampshire bar. No member of the board shall be a member of any state or national committee of a political party, nor an officer or member of a committee in any partisan political club or organization, nor shall hold, or be a candidate for, any remunerative elective public office during his term of office and shall not be otherwise employed in any of the agencies of the state government.

II. Members of the board shall each be paid \$100 for each day devoted to the work of the board, but not more than \$5,000 each in any one year. They shall be reimbursed for necessary expenses in connection with their official duties.

III. Members of the board shall be removed only as provided in RSA 4:1.

**RSA 21-I:46 Powers and Duties of Board.**

The board shall meet as often as necessary to conduct its business, provided that no more than 30 days shall elapse between meetings whenever there is any appeal pending before the board. Two members of the board shall constitute a quorum.



## BOARD DEVELOPMENTS FOR FY 2014

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During Fiscal Year 2014, several members of the Board elected not to be reappointed for another term. This included Commissioner Patrick Wood, Commissioner Robert Johnson and Commissioner Philip Bonafide. Their service to the citizens of the State of New Hampshire is greatly appreciated. Unfortunately, this also dropped the Board below the amount of members necessary for a quorum pursuant to RSA 21-I:45. The Board as previously constituted held its last hearing in October of 2013. Therefore, despite a statutory requirement for the Board to meet at least once every 30 days, the Board went until May of 2014 until enough new commissioners were appointed in order for it to schedule cases again.

The only remaining Commissioner, Joseph Casey was named chair of the Board. Commissioner David Goldstein was confirmed in April 2014 and Commissioner Norman Patenaude (Vice Chair) and Commissioner Charla Stevens were confirmed in May 2014.

The Board underwent other major changes during the course of Fiscal Year 2014. After many years of dedicated service to the Board and to the State of New Hampshire, the Board's Executive Secretary Mary Ann Steele retired. Her wisdom and depth of knowledge will be missed by all those who worked with her over the past few decades. A new Board Administrator, Daniel St. Hilaire, replaced Mary Ann Steele in May of 2014. Additionally, the Board's administrative assistant, Robin Hoyt, took another position within the Department of Personnel. Stephanie Haynes transferred from the Department of Safety and now handles administrative assistant functions for the Board.

## CASE LOAD AND SCHEDULING

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The new Board had nearly forty cases on hold awaiting a disposition. Pre-hearings were scheduled for a number of cases and will continue to be scheduled into the next fiscal year. Cases filed for FY 2014 and trends follow below.

### Statistical Information Appeals Received During FY 2014 (Arranged by Department)

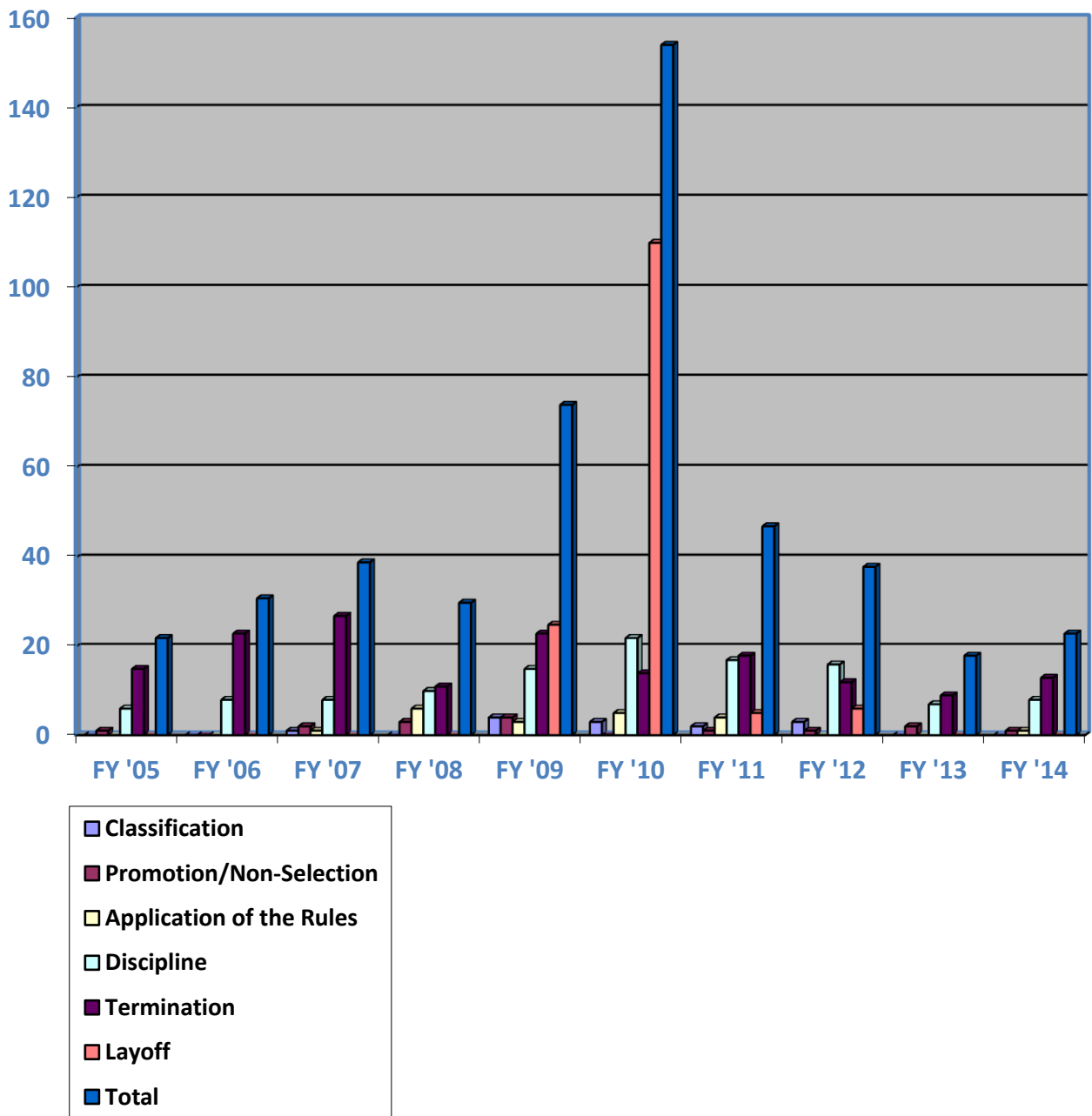
Docket #	Description	State Agency
2014-O-001	Non-certification of application for CC/CM	CORRECTIONS DEPARTMENT
2014-D-008	Letter of Warner	CORRECTIONS DEPARTMENT
2014-D-007	Letter of Warning	CORRECTIONS DEPARTMENT
2014-T-002	Termination	CORRECTIONS DEPARTMENT
2014-T-003	Termination	CORRECTIONS DEPARTMENT
2014-D-004	Letter of Warning	CORRECTIONS DEPARTMENT
2014-D-002	Written Warning	CORRECTIONS DEPARTMENT
2014-T-007	Termination	CORRECTIONS DEPARTMENT
2014-T-001	Termination	CORRECTIONS DEPARTMENT
2014-T-010	Termination	DEPT OF AGRICULTURE, MARKETS & FOOD
2014-P-001	Non-selection for promotion	DEPT OF HEALTH & HUMAN SERVICES
2014-D-003	Letter of Warning	DEPT OF HEALTH & HUMAN SERVICES
2014-T-004	Termination for failure to report at conclusion of leave	DEPT OF SAFETY
2014-T-005	Termination	DEPT OF SAFETY
2014-T-008	Non-disciplinary removal	DEPT OF SAFETY
2014-D-006	Letter of Warning	DEPT OF SAFETY
2014-T-006	Non-disciplinary removal	DEPT OF TRANSPORTATION
2014-T-013	Termination	DEPT OF TRANSPORTATION
2014-T-012	Termination	DEPT OF TRANSPORTATION
2014-T-009	Termination	DEPT OF TRANSPORTATION
2014-D-005	Letter of Warning	LIQUOR COMMISSION
2014-T-011	Termination - Unjust Dismissal	LIQUOR COMMISSION
2014-D-001	Letter of Warning	NH HOSPITAL

### Representation of Parties at Appeals Board Proceedings

Representatives	FY '10	FY '11	FY '12	FY '13	FY '14
Pro Se	9	15	8	4	4
Private Attorney	6	4	4	4	3
State Employees Association, Troopers Association, NEPBA or Teamsters	139	28	26	10	16

### Ten-Year History of Appeals Filed

	FY '05	FY '06	FY '07	FY '08	FY '09	FY '10	FY '11	FY '12	FY '13	FY '14
Classification	0	0	1	0	4	3	2	3	0	0
Promotion/Non-Selection	1	0	2	3	4	0	1	1	2	1
Application of the Rules	0	0	1	6	3	5	4	0	0	1
Discipline	6	8	8	10	15	22	17	16	7	8
Termination	15	23	27	11	23	14	18	12	9	13
Layoff	-	-	-	-	25	110	5	6	0	0
Total	22	31	39	30	74	154	47	38	18	23



## **NARRATIVE**

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During the course of Fiscal Year 2014, the Board received twenty three new appeals. This was a 28% increase over the prior year. These filings were added on top of the open cases from the prior fiscal years and created a backlog of cases waiting to be heard. Because the Board lacked a quorum, the PAB met only during a four month period of time in FY 2014.

During the last few weeks of FY 2014, the Board started meeting again. Because a majority of the Board members were new, the cases on hold had to start from the beginning again with a new pre-hearing conference in order for the new Board to define the scope of the issues and rule on pending motions.

Cases concerning terminated employees were given scheduling priority and it is anticipated that every case will be reached within the first few months of the next fiscal year.

## **PUBLIC ACCESS TO RECORDS AND PROCEEDINGS**

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Documents submitted to the Board including hearing requests, pleadings and attachments, are exempt from disclosure under the provisions of RSA 91-A:5, IV, unless and until those documents are presented to the Board and admitted into the record at a public hearing, as those records include personnel records and records pertaining to internal personnel practices. Once those documents are introduced in a public hearing, however, they are included in the public record required by RSA 21-I:42, IX (a)(3) and RSA 541-A, and they are open to public inspection unless otherwise exempt from disclosure by Court order, by order of the Board, or as described by RSA 91-A:5, IV.

In order to remind parties that their submissions and the Board's decisions are readily available to the public, the Board's web page provides the following caution:

"Hearings are open to the public. In most cases, documents that a person files as an attachment to an original appeal, or as evidence in an appeal, become public records. As such, agencies and employees filing appeals need to be careful about releasing any documents that they would not want published and available to the general public."

Employees can opt to go through an informal settlement process prior to having a full hearing before the Board. This process is not open to the public and is encouraged as a way for parties to resolve their disputes before going before the Board for disposition.

### **Electronic Archives**

Before 2008, the Board kept hard-copy files that included all submissions, notices, pleadings, exhibits and decisions for each appeal filed, as well as copies of tape recordings for each hearing conducted. When its amended rules were adopted in 2008, the Board included provisions concerning retention of records, whereby parties could retrieve their copies of exhibits once a final deadline for further appeal had passed. Those exhibits not returned to the parties could then be eliminated, reducing the Board's file of the appeal to copies of pleadings and decisions. In 2009, the Board began purging its hard-copy files, replacing the original appeals, pleadings and decisions with an electronic copy maintained on CD. The vast majority of the Board's old archived pleadings and decisions have since been scanned, and the paper records shredded and recycled.

## **BOARD TRAINING AND OTHER DUTIES**

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Pursuant to statute, all new Board members are required to undergo training. Former Commissioner Patrick Wood along with Board Administrator Dan St. Hilaire conducted a training session for new commissioners in May 2014.

In addition, pursuant to statute, the Board is required to review any new rule changes made to the Personnel Rules. The Personnel Rules are scheduled to expire in October 2014. Proposed rules will be presented to the Board at the beginning of FY 2015 for their review and comment.

## APPEALS DECIDED, DISMISSED, SETTLED OR WITHDRAWN DURING FY 2014

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DOCKET NUMBER	AGENCY NAME	ACTION UNDER APPEAL	DECISIONS	CASE DECISION DATE
2013-D-004	Health & Human Services	Letter of Disciplinary Action	Withdrawn	6/11/2014
2014 – 003	Health & Human Services	Letter of Warning	Withdrawn	3/07/2014
2014-T-088	Safety	Non-disciplinary Removal	Withdrawn	2/20/2014
2014-D-001	NH Hospital	Letter of Warning	Withdrawn	2/12/2014
2007-P-002	Personnel	Certification/Selection	Withdrawn	1/27/2014



## DECISIONS OF THE NH SUPREME COURT

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The matter of Pamela Lindberg was appealed to the New Hampshire Supreme Court in FY 2013. This matter has not been heard by the Court yet.

A decision regarding the matter of Derek Holston was issued on May 5, 2014. This matter is before the PAB with issues of discovery remaining unresolved. The Board ordered the Department of Safety to provide Derek Holston with discovery as limited by order of the Board. The Department appealed that decision arguing that the discovery requested was irrelevant and burdensome to produce. The Court upheld the Board's decision and has remanded the matter back to the PAB for continued disposition.

## **OBSERVATIONS AND RECOMMENDATIONS FOR IMPROVEMENT OF THE PERSONNEL SYSTEM**

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RSA 21-I:46, VI, requires the Personnel Appeals Board to include a section in its annual report describing the Board's observations about problems related to the personnel system and its recommendations for dealing with those problems. In the past, the Board has addressed a variety of issues, including position classifications, performance evaluations, workforce development, strategic planning, discipline, due process, communications, legislative funding decisions, and transparency in government. Those earlier observations and recommendations continue to reflect the Board's opinion concerning the personnel system as a whole and therefore need not be repeated here. Beyond those concerns, the PAB will monitor the rule changes due to take effect in FY 2015. The PAB will continue to advocate for the appointment of a fifth commissioner in order for individual Board members to experience less scheduling pressures and in order for the Board to be more accommodating to those that appear before it.